

COLLEGE
RELATIONS
COMMISSION

Annual Report
1989-1990



Ontario

College
Relations
Commission

La commission
des relations de travail
dans les collèges

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**The Members of the Legislative Assembly
Province of Ontario**

Dear Members,

I have the honour to present the Fifteenth Annual Report of the College Relations Commission, covering the period from September 1, 1989 to August 31, 1990.

**Katherine E. Swinton
Chair
College Relations Commission**

August 31, 1990

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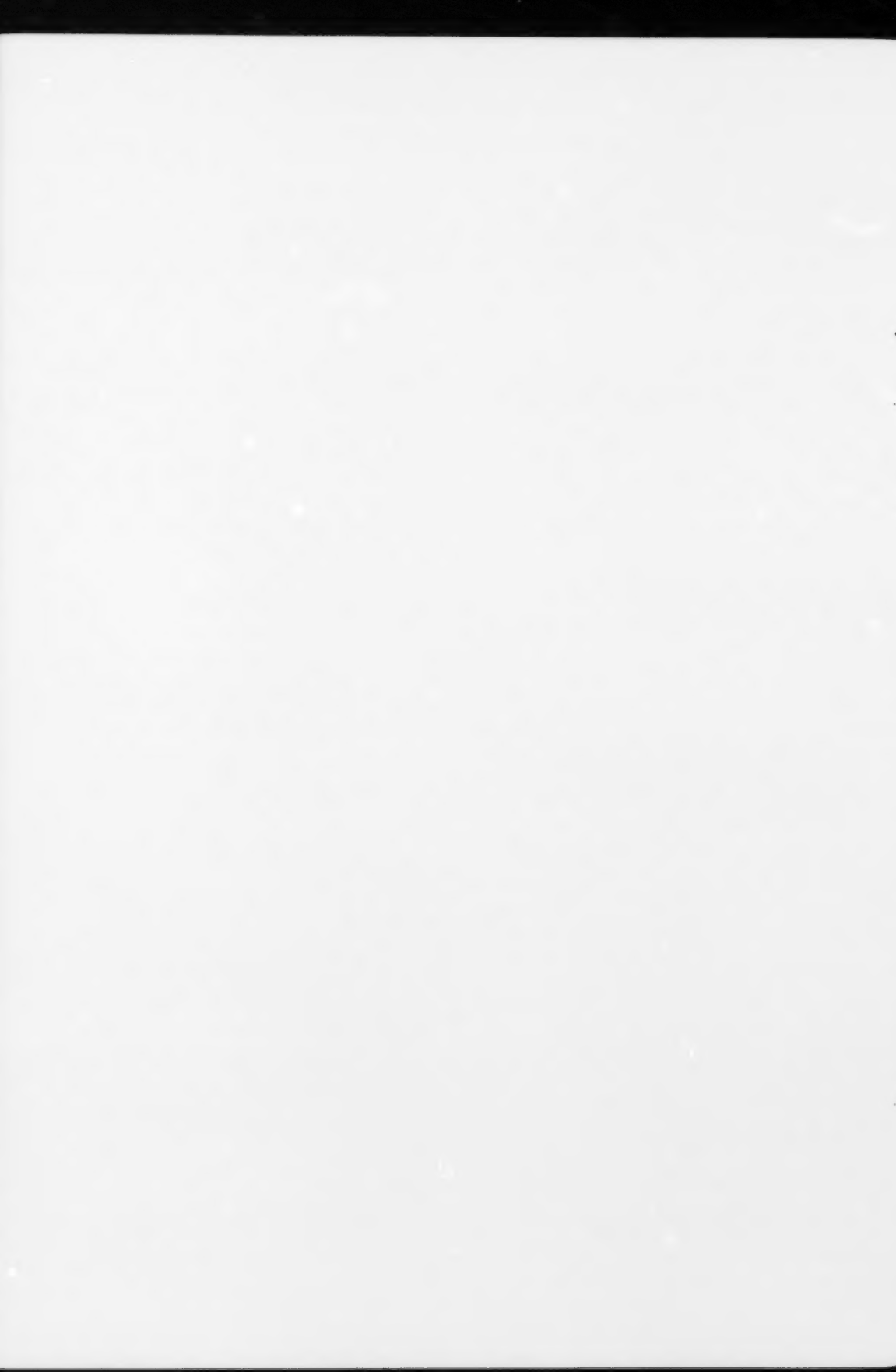
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I THE COMMISSION

Members

The College Relations Commission is composed of five members appointed by the Lieutenant Governor in Council. The terms of appointment range from one to three years, and each member of the commission is eligible for reappointment upon the expiration of the term.

Ms. Katherine E. Swinton was appointed as chair on November 1, 1987. Mr. David Allan Hayes was appointed as vice-chair on May 11, 1988. Mrs. Trèva Legault Cousineau was appointed as commissioner on May 11, 1988. Both Mr. John Irwin Zeiler and Mr. William John McNeil were appointed as commissioners on March 6, 1989.

Organizational Structure

The College Relations Commission is served by the staff, and uses the facilities, of the Education Relations Commission (ERC). It has also been able to draw upon the third party neutrals used by the ERC.

The ERC has a permanent 17-member staff assigned to Field Services and Information Services. All appointments and major decisions and determinations are made by the commission; however, the day-to-day operations of the commission are managed by the chief executive officer. The chief executive officer and secretary of the ERC is Robert E. Saunders. The commissions' offices are at 111 Avenue Road, Suite 400, Toronto, Ontario M5R 3J8.

Establishment

The College Relations Commission was established in 1975 under section 55 of the Colleges Collective Bargaining Act, Revised Statutes of Ontario 1980, chapter 74. This Act was adopted at the same time as the School Boards and Teachers Collective Negotiations Act, and the two statutes share a basic framework to govern the negotiations process.

Duties

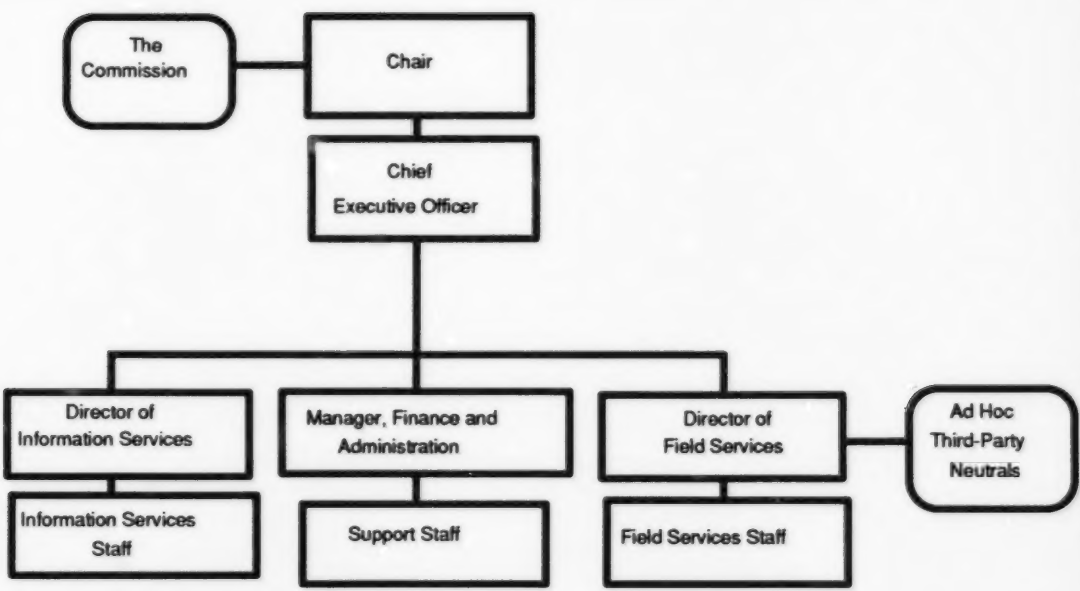
The duties of the College Relations Commission are set out in subsection 56 (1) of the Colleges Collective Bargaining Act.

It is the duty of the Commission :

- (a) to carry out the duties imposed on it by this Act and such other functions as may, in the opinion of the Commission, be necessary to carry out the intent and purpose of this Act;
- (b) to maintain an awareness of negotiations between the parties;
- (c) to compile statistical information on the supply, distribution, professional activities, and salaries of employees;

- (d) to provide such assistance to parties as may facilitate the making or renewing of agreements;
- (e) to select and, where necessary, to train persons who may act as mediators, fact finders, arbitrators, or selectors;
- (f) to determine, at the request of either party or in the exercise of its discretion, whether or not either of the two parties is or was negotiating in good faith and making every reasonable effort to make or renew an agreement;
- (g) to determine the manner of conducting votes and to supervise votes by secret ballot pursuant to this Act; and
- (h) to advise the Lieutenant Governor in Council when, in the opinion of the Commission, the continuance of a strike, lock-out, or closing of a college or colleges will place in jeopardy the successful completion of courses of study by the students affected by the strike, lock-out, or closing of the college or colleges.

ORGANIZATION CHART: The College Relations Commission



II OVERVIEW OF NEGOTIATIONS

The Negotiation Process

The mandate of the College Relations Commission to maintain an awareness of and facilitate collective negotiations between the Ontario Council of Regents for Colleges of Applied Arts and Technology, as employer, and the Ontario Public Service Employees Union, representing the academic and support staffs, is contained in the Colleges Collective Bargaining Act. Passed in 1975 and revised in 1980, this Act gives the academic and support staffs the right to strike and gives the Ontario Council of Regents for Colleges of Applied Arts and Technology the right to lock out. These rights, however, are regulated. For example, a strike or lockout is not legal until:

- (a) a fact finder has met with the parties and his or her report has been made public; and
- (b) a fifteen-day cooling-off period takes place after the fact finder's report is submitted to the parties; and
- (c) the members of the employee organization have voted, by secret ballot, in a supervised vote on the last offer of the Council of Regents; and
- (d) the members of the employee organization have voted, by secret ballot, in a supervised vote to take strike action.

At any time during the process, the parties may choose voluntary binding arbitration or final offer selection as an alternate means of dispute resolution. The commission monitors the negotiation process from the time an intent to negotiate is filed by the parties until a collective agreement is signed. Particular attention is paid to the timing and appropriateness of appointments of fact finders and mediators. The conduct of votes – last offer, strike, or ratification – has assumed major importance for the Commission. This is due not only to the number of votes that have been supervised, but also to the number of members of the employee organization and the number of campuses involved.

The negotiation process between the support staff and the council has normally been successful in bringing the parties to agreement. The process between the academic staff and the council has been more difficult, sufficiently so that in 1987 a commission was formed. Professor Jeffrey Gandz was appointed to review the whole bargaining process. His report, released in January 1988, made a number of recommendations for changes in the framework of the negotiating process and the administration of the Act. The most significant, from the commission's own perspective, were recommendations 33 and 34.

- 33. A further \$200,000 should be appropriated for its annual budget to add a colleges employee relations officer, to fund the development and maintenance of a colleges collective bargaining data base, and to offer a program for local employee relations improvement to the colleges.

34. The College Relations Commission should review its procedures for carrying out supervised votes in the colleges and work with both union representatives and representatives of college administration to streamline and improve these procedures.

The Ministry of Colleges and Universities prepared an outline response to the recommendations in February 1989 that raised a number of issues, but the ministry, while receiving responses from the parties, has proceeded no further.

The commission believes that Professor Gandz's recommendation to provide more information to assist in the bargaining and for a greater use of information in the negotiations would be beneficial to the parties. His recommendation received indirect further support when the arbitrator in the academic-staff dispute ordered the establishment of a joint task force on academic wages and benefits to develop a framework of comparison indicators and parameters and to provide for the establishment and maintenance of a data base to support the bargaining. Such a step would, however, necessitate the allocation of funding to the commission to provide staff for such a service.

Negotiations 1989

As was noted in the 1988-1989 annual report, the agreements between the Council of Regents and the Ontario Public Service Employees Union expired on August 31, 1989. During the spring of 1989, the parties spent a great deal of time in negotiations discussing procedures and substantive issues, but there was little movement towards agreement except on minor items. At the request of the parties, the commission appointed fact finders to assist in the bargaining. Mr. Douglas Lawless was appointed for the support staff and Dr. William Marcotte for the academic staff. Their reports were made public before the old agreements expired.

The flavour of the negotiations in the academic sector may be seen in the fact finder's report of August 3, 1989.

The parties' presentations on the matters agreed upon and remaining in dispute lacked a degree of precision that would allow me to comment, with specificity, on the particular clauses or articles which they separately or jointly wish to amend, delete, modify or alter in some fashion, or, as to additions to the agreement that they propose, either separately or jointly. That is not to say that a close examination of the documents would not allow me to identify the particular items agreed upon or remaining in dispute. Rather, in the hearing, the parties chose to follow a course of presentation that focused more on the process-qua-process of negotiations than on the negotiatory subject-matters.

The parties' presentations at fact finding centred on two intertwined themes: the role of fact finding and the negotiations process governed by the Act. The union submitted that its reason for requesting fact finding was based on the legislated requirement that it must occur as part of the process as provided for in the Act. The union further submitted that, since fact finding is a mandatory

requirement, it wished to conform to that part of the Act which requires fact finding in order to gain access to those procedures for which it is a condition precedent. In regard to the role of fact finding in the process, aside from its legislated necessity, the union submitted that the "sanctity of the negotiations process" dictates that unresolved matters must be settled, bilaterally, between the parties, and, that their attempted resolution, by way of non-binding recommendations from a fact finder, would serve little purpose, especially given the abstruse nature of the parties' collective agreement.

For its part, the council concurred with the union's presentation, but in a narrower fashion. It was the council's position, in effect, that given the present stage of negotiation, and given both the issues in dispute and the parties' positions on them, it, as well, was of the view that a fact finder's recommendations may not have a useful purpose in the current round of negotiations. The council, therefore, also requested that I refrain from making recommendations for settlement or for purposes of establishing a framework for settlement concerning the issues that remain in dispute.

Pursuant to s.4(2) of the Act, the parties' collective agreement expires on August 31, 1989. Thus, this fact-finding process was instigated on the basis that an impasse has been reached in the negotiations process. The "impasse" is said to have occurred when, on May 31, 1989, the union rejected the council's "Offer For Settlement", pursuant to s.59(1)(d), by a vote of approximately 90% against and 10% in favour of the offer. In the hearing, however, it was made obvious that the "impasse" which triggered the fact-finding process is not considered by the parties to be a true impasse in the sense that their differences are irreconcilable.

As previously stated, the reason for the parties' request for fact finding is simply to conform to the legislated requirement that this form of third-party assistance must occur as a condition precedent should the parties elect to opportune themselves of certain other courses of action available under the Act. The union's position, as to the efficacy of fact finding, is consistent with its historical perception of this form of third-party assistance Re: Report of the Colleges Collective Bargaining Commission (1985), 25'. (Gandz). On the other hand, the council's position appears to be based on the current status of the negotiations and reflects a concern that, given the state of affairs in this particular round, a fact finder's recommendations, at the very least, would be premature.

As matters now stand, the union has rejected, by a wide margin, the council's offer for settlement. This rejection, however, was not unexpected by either party. Indeed, at the hearing, the vote that the Act identifies, in s.59 (1) (d), as "the last offer received" by the union, was referred to as the "rejection vote". Neither the council nor the union views the terms and conditions contained in the council's offer as its "final offer" on the matters remaining in dispute.

Thus, what has actually been offered and rejected is simply the positions held by the council on outstanding items as of May 31, 1989. It is no wonder that recommendations on the part of a fact finder are not viewed, at this stage, as potentially useful.

On the basis of the foregoing, I share the parties' perceptions of the Futility of making recommendations for settlement on outstanding matters. That said, however, I am concerned that, there are major items remaining in dispute. This concern, moreover, stems from the parties' demonstrated inability, over an extended number of years, to conclude their negotiations in short order and without extensive third-party involvement. And while this circumstance may have changed, since the parties have recently (in the short part) resolved major elements of the long-standing, fractious matter of workload (the publicly-identified issue that was a major cause of a short-lived strike by the union in the Fall of 1984), I am less optimistic than is the union that the "sanctity of the negotiations process", will result in a collective agreement without, to continue the metaphor, "eschatological" events, ranging from unnecessarily protracted negotiations (which tend to breed intransigence) to invocation of sanctions, i.e., strike or lock-out.

Rather than desiring an outside, informed view of the negotiations with advice to assist, the parties very evidently wanted pressure to be the catalyst in the negotiations.

The commission appointed Mr. Terry Mancini, a very experienced and successful mediator, to work with the parties in the academic sector to assist in reaching an agreement. In the support staff negotiations, Dr. Gene Swimmer of Carleton University, another effective mediator whom the commission had appointed in the role in previous negotiations, was appointed as mediator. Each met with the parties for several days in the late summer and, while they were able to move the parties towards a tentative resolution of some issues, much remained to be done when the agreements expired and the colleges reopened.

In the support staff negotiations, the union filed for last offer and strike votes to be held on Wednesday, September 13, 1989. While the council's last offer was rejected by about a 2-to-1 vote, the strike vote revealed that only 50.2% were willing to apply this sanction. In subsequent negotiations with the assistance of the mediator, the parties reached agreement on October 1, 1989. The agreement was ratified by the union by a vote of 65.5%.

The path of the academic staff negotiations was more difficult. Efforts to negotiate an agreement in September failed. The union, having conducted a last offer vote on May 31, held a strike vote on Thursday, October 12. The result of the vote was 54% in favour of strike; the union immediately filed notice for strike action to begin on Wednesday, October 18. Intensive mediation efforts in the days before October 18 again failed to bring the parties to a settlement. Negotiations broke off, and the strike commenced. The colleges were unable to offer any regular instructional programs.

Mediation efforts continued, but at the end of the third week of the strike it became apparent that the parties were unable to make the compromises necessary to reach a settlement. The commission, after careful consideration of the state of negotiations, came to the conclusion that settlement in the near future was unlikely. While the colleges, whose presidents had set up a committee to look at how the instructional programs could be organized after the strike, were of the view that it would at that time still be possible to complete courses of study, the commission could not foresee when an agreement might be reached. Accordingly, the commission advised the minister on Tuesday, November 14, 1989, that in its view the government should intervene. The commission also recommended mechanisms for resolving the dispute.

The parties decided on the same day, however, to submit the dispute to mediation-arbitration and asked Mr. Martin Teplitsky to serve as the mediator-arbitrator. The colleges reopened later in the week. After failing to mediate a settlement, Mr. Teplitsky issued an arbitral award on November 28, 1989.

**Other
Matters**

During the course of the support staff negotiations there was a good faith bargaining complaint filed by Local 654 of Northern College. The complaint was resolved by the parties without a commission hearing. There was also an objection to the conduct of the ratification vote filed by the union over the issue of the right of persons acting temporarily in a management position to vote in procedures under the Act. The chief executive officer issued a decision on the matter.

The Standing Committee on Government Agencies invited the commission to appear before it to discuss bargaining in the colleges and the Gandz Report. The committee's report has now been circulated to the legislature, outlining its concern about the problem of defining "jeopardy in the successful completion of courses of study" in the event of a strike or lock-out, and the problem of dropouts during such sanctions, where instruction is not available. The commission, after its appearance, reviewed the issue intensively and agreed upon procedures for consideration of the issue.

III STATEMENT OF EXPENDITURES

April 1, 1989 - March 31, 1990

<u>Categories</u>	<u>Budget Allocation</u>	<u>Actual Expenditures</u>
Transportation & communications	\$ 10 000	\$ 16 023
Services	\$ 95 600	\$ 82 794
Supplies & equipment	\$ 2 000	\$ 2 833

Total Budget Allocation	\$ 107 600	
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Total Actual Expenditures		\$ 101 650
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Chair: Katherine E. Swinton, B.A. Hon.-History (University of Alberta), LL.B. (Osgoode Hall Law School, York University), LL.M. (Yale University), Member of the Ontario Bar

Ms. Swinton, a professor in the Faculty of Law at the University of Toronto, has served as chair of labour arbitration boards in the private and public sectors and as vice-chair of the Ontario Crown Employees' Grievance Settlement Board. She has published extensively in the area of labour relations and has co-edited *Studies in Labour Law*.

Vice-Chair: David Allan Hayes, B.A. (McMaster University), M.Ed. (University of Toronto)

Mr. Hayes is a retired educator. He has served as a supervisory officer with the Lincoln County Board of Education, both as a superintendent of curriculum and as an area superintendent. As a supervisory officer, Mr. Hayes developed and implemented a complete evaluation system for all teaching and supervisory personnel, and special programs to assist general level students and reduce the dropout rate among secondary school students. Mr. Hayes also developed a complete curriculum design, implementation, and review program for all Kindergarten to Grade 13 programs and a co-operative professional development program for teachers.

Commissioner: Trèva Legault Cousineau, B.Sc. (H.Ed.) (University of Ottawa), R.P.Dt.

Mrs. Cousineau was co-ordinator of French-Language Services for the Ministry of Community and Social Services, North Central Area, and a member of the board of governors of Cambrian College, Sudbury. She has served as chair and vice-chair of the Timmins District Roman Catholic School Board, member of the Commission on the Financing of Elementary and Secondary Education in Ontario, chair of the Ontario School Trustees' Council, and member of the Ministry of Education's Committee on Special Education and Advisory Council on the Role of the Trustee.

Commissioner: John Irwin Zeiler, B.A. (University of Toronto), LL.B. (University of Toronto)

Mr. Zeiler is a partner in the law firm of Leve and Zeiler, whose practice includes real estate and corporate, commercial, and estate work. He was the solicitor for the developer who registered the first condominium in Ontario. Mr. Zeiler has taught for the Ontario Real Estate Association, the Appraisal Institute of Canada, and more recently in the Department of Administrative Studies at York University, where he lectures in real property law and negotiations.

Commissioner: William John McNeil, B. Com. (University of Toronto)

Mr. McNeil has had fifteen years' service as a teacher and vice-principal in North York and fifteen years' service as a field officer with the Ontario Secondary School Teachers' Federation. His past positions include president of District 13 of the OSSTF, governor of the Ontario Teachers' Federation, advisory board member of the provincial executive of the OSSTF, and former trustee of the Ontario Teachers' Insurance Plan. He is currently enrolled in the master's degree program in industrial relations at the University of Toronto.